

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-319

June 11, 1998

CENTRAL MAINE POWER COMPANY
Petition for Approval of
Affiliated Interest Transaction
and Reorganization of FiveCom
Entities

ORDER APPROVING
STIPULATION

WELCH, Chairman; NUGENT, Commissioner

I. SUMMARY

In this Order, we approve the Amended Stipulation authorizing various reorganizations, affiliated interest transactions and partial exemptions for reorganization approvals related to the FiveCom entities.

II. BACKGROUND

On April 29, 1998, Central Maine Power Company (CMP) filed a petition for various affiliated interest approvals under 35-A M.R.S.A. § 707 and for partial exemption (or, in the alternative, for approval) under section 708 in connection with a reorganization of FiveCom, Inc., and its affiliates, referred to by CMP as a "roll-up." Specifically, CMP seeks approval to reorganize its existing affiliates FiveCom, Inc., FiveCom LLC, NECOM LLC, and FiveCom of Maine LLC into two new affiliates, NECOM, Inc. and FiveCom of Maine, Inc. CMP also requested that the Commission exempt it from the operation of the reorganization statute, 35-A M.R.S.A. § 708, with respect to future activities involving the FiveCom entities, so long as CMP is not infusing cash in connection with the reorganization.

On May 7, 1998, a Notice of Proceeding and Opportunity for Intervention was issued. The Public Advocate is the only intervenor in this proceeding.

On May 21, 1998, CMP filed a revision to its FiveCom reorganization plans. CMP indicated that the surviving entity in the roll-up will be NorthEast Optic Network, Inc. (NEON) and that FiveCom, Inc. will not be forming a new entity referred to as NECOM, Inc. CMP also stated that, at some point in the future, FiveCom of Maine, Inc. may be merged into NEON such that NEON would become the grantee under the fiber agreement currently between FiveCom of Maine, LLC and CMP. Finally, CMP indicated that, after the roll-up, CMP may transfer its interest in NEON to

MaineCom Services or otherwise divest itself of its interest in NEON.

On June 1, 1998, CMP filed a Stipulation, recommending final disposition of this matter. On June 4, 1998, CMP filed an Amended Stipulation. Both agreements were signed by CMP and the Public Advocate; the only parties to this proceeding. CMP explained that the Amended Stipulation became necessary to accommodate FiveCom's business plan to create two new entities to be called Alexiscom, Inc. and Gretacom, Inc. that will be formed to do business in New York and Connecticut respectively; the entities will be established to satisfy certificate requirements in those states. The formation of these new entities will not require any new investment, loan or financial accommodation of any kind on CMP's part.

III. STIPULATION

The Advisory Staff and the parties had several discussions concerning the issues raised by CMP's petition. The terms of the Amended Stipulation are the result of those discussions.

A. Reorganizations

Under the Stipulation, CMP is granted approval for the roll-up so that ultimately NEON will own 100% of FiveCom of Maine, Inc., Alexiscom, Inc. and Gretacom, Inc. Additionally, CMP is authorized to either sell its interest in NEON or transfer it to MaineCom so long as the transfer is not inconsistent with the Commission's final Order in Docket No. 97-930.

B. Affiliated Interest Transactions

The Amended Stipulation authorizes CMP to transfer the CMP loan, approved by Order dated August 28, 1997¹ in Docket No. 97-410, so that NEON has the obligation as the borrower. Additionally, CMP may transfer the fiber agreement so that it becomes an agreement between FiveCom of Maine, Inc. and CMP with FiveCom of Maine becoming the grantee under the agreement. In the event FiveCom of Maine becomes merged into NEON, authorization is granted for NEON to become the grantee under the fiber agreement.

C. Partial Exemptions

The Amended Stipulation provides that at the time that all obligations under the CMP loan have been paid in full, CMP shall be exempt from the requirement to seek reorganization

¹ The Amended Stipulation erroneously cites the date of the Order as August, 28, 1998. On June 9, 1998, CMP filed a replacement page correcting the error.

approval as long as CMP is not in any way infusing cash as part of the underlying transaction. This exemption would not apply to any change in CMP's ownership interest in MaineCom. The Amended Stipulation also provides for a partial exemption from MaineCom-related reorganizations. Under this partial exemption, CMP will continue to be subject to reorganization approval with respect to the creation by MaineCom of affiliated interests, but all such reorganizations will be deemed approved unless the Commission initiates an investigation of the reorganization within 30 days following the filing.

IV. DISCUSSION

We have considered the Amended Stipulation under our general criteria for approving such agreements: whether the parties joining the Stipulation represent a sufficiently broad spectrum of interests; whether the process that led to the Stipulation was fair; and whether the stipulated resulted is reasonable, not contrary to legislative mandate, and is in the public interest. See *Public Utilities Commission, Investigation Into Regulatory Alternatives for the New England Telephone and Telegraph Company d/b/a/ NYNEX*, Docket No. 94-123 at 4-5 (Mar. 17, 1998). Taking these general criteria into account and upon review of the specific terms of the Amended Stipulation, we find the agreement to be reasonable and not contrary to the public interest. Regarding the provision for 30 day approval of certain reorganizations, we direct CMP to note the existence of this provision in its cover letter accompanying any such filing.

Accordingly, we

O R D E R

That the Amended Stipulation filed on June 4, 1998, attached to and incorporated in this Order, is hereby approved.

Dated at Augusta, Maine this 11th day of June, 1998.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.